IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

NOTICE OF MOTION NO.3280 OF 2004

IN

SUIT NO.3193 OF 2004

...

M/s.Chothani & Sadguru Associates ...Plaintiffs

v/s.

Deepak Hargovindas Doshi and Ors. ...Defendants

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Mr.N.G.Thakkar with Mr.D.H. Mehta i/b S.R.S.Legal for the Plaintiffs.

Mr.J.P.Sen i/b Udwadia & Udeshi for the Defendant No.1.

Mr.P.K.Samdhani with Mr.Milind Vasudeo, Mr.Subodh Joshi and Ms.Radhika Piazora and Ms.Hetal Savla i/b P.K.Shroff & Co. for Defendants Nos. 2 & 3.

Mr.A.Y.Bookwala i/b Shiralkar & Co. for Defendants

Nos. 4 to 6.

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CORAM: D.K.DESHMUKH, J.

DATED: 27TH OCTOBER,2005

P.C.:

1. This Notice of Motion is taken out by the Plaintiff. The Plaintiff has filed this suit for specific performance of Memorandum of Understanding, copy of which is at Exh.C to the plaint. Admittedly, the property which is the vacant land is owned by six Defendants. Even according to the Plaintiff, Defendants Nos. 2 & 3 have not signed Memorandum of Understanding. Though it is the case of the Plaintiff that Defendants Nos. 2 & 3 by their conduct of not objecting when the Plaintiff applied for various permissions, put up a fencing on the property, have also agreed to the agreement, it cannot be said at least at this stage that the Defendants Nos. 2 & 3 are also parties to the Memorandum of Understanding of which specific performance is sought. The Memorandum of

Understanding is for development of the property. Therefore, in my opinion, it cannot be said, at least, at this stage that the Plaintiff would be entitled to get a decree of specific performance of Memorandum of Understanding of such nature. The learned Counsel for the Plaintiff relying on a judgment of the Supreme Court in the case of Kartar Singh v/s. Harjinder Singh & ors, AIR 1990 SC 854 states that a specific performance of an agreement to sell a share of the one of the co.sharers cannot be granted. In my opinion, that judgment is not relevant in this case, because the agreement is not an agreement to sell the property, but is essentially for development of the property and for transfer of the 50% of the developed area to the Plaintiff/developer. If Defendants Nos. 2 & 3, who admittedly are the part owners of the property, are not parties to the Memorandum of Understanding then, in my opinion, there is no possibility of the Plaintiff getting the decree of specific performance of the agreement, because the agreement contemplates development of the entire property including the undivided share of the Defendants Nos. 2 & 3 in that property. It is further to be seen here that after going through the terms of the agreement, I find that

in truth and substance the agreement is an agreement to develope the property. So far as this court is concerned, it is now a settled law that the specific performance of the agreement to develope the property cannot be granted.

2. In this view of the matter, therefore, in my opinion, it cannot be said that the Plaintiff has made out a prima facie case, let alone a strong prima facie case, therefore, the Plaintiff is not entitled to any interim order.

3. The learned counsel appearing for the Defendants Nos. 4, 5 & 6 has stated before me that without prejudice to their rights and contentions, Defendants Nos. 4, 5 & 6 will deposit in this court, within a period of four weeks from today, an amount of Rs.10 lakh, which was paid to them by the Plaintiff and they also do not have any objection to Plaintiff withdrawing the amount.

Statement is accepted.

4. In view of this statement, it is directed that the Defendants Nos. 4, 5 & 6 shall deposit an amount

of Rs.10 lakh in this court with due intimation to the Plaintiff, within a period of four weeks from today. The Prothonotary & Sr.Master may permit the Plaintiff to withdraw the amount if they seek withdrawal of that amount within a period of four weeks from the date of its deposit. If the amount is not withdrawn within that period, then the Prothonotary & Sr.Master shall invest the amount in fixed deposit in any nationalised bank during the pendency of the suit.

5. The learned Counsel for the Defendants Nos. 4, 5 & 6 also stated that in case the Plaintiff produces proof of having paid or deposited any amount in relation to securing permission of various statutory authorities for the purpose of development of the property, then the Defendants Nos. 4, 5 & 6 will immediately reimburse those amounts to the Plaintiff, provided the Plaintiff gives in writing that the deposits made and the permissions secured shall enure to the benefits of the Defendants Nos. 4, 5 & 6.

Notice of Motion disposed of.

6. At this stage a request is made to continue the

ad-interim order directing the parties to maintain the status-quo for a period of four weeks. Since, I have found that the Plaintiff has failed to make out a prima facie case, in my opinion, it will not be appropriate to continue the operation of the ad-interim order. Request is rejected.

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